

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 16136US02)

In the Application of:

CATREUX, SEVERINE et al.

U.S. Patent: 7,822,140

Issue Date: October 26, 2010

Serial No.: 10/801,930

Filed: March 16, 2004

For: MULTI-ANTENNA
COMMUNICATIONS SYSTEMS
UTILIZING RF-BASED AND BASEBAND
SIGNAL WEIGHTING AND COMBINING

Examiner: Sophia Vlahos

Group Art Unit: 2611

Confirmation No.: 4709

Transmitted via the Office electronic filing
system December 22, 2010.

**APPLICATION FOR RECONSIDERATION OF THE
PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b)
INDICATED IN THE PATENT (37 CFR § 1.705(d))**

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

The Applicants respectfully request reconsideration of the patent term adjustment indicated on the cover page of the patent ("the patent PTA decision"), to the extent indicated in the following discussion and the enclosed modified version of the current USPTO Patent Term Adjustment calculation on PAIR ("The Spreadsheet"). The spreadsheet and the total PTAs indicated in this paper also reflect aspects of the current USPTO Patent Term Adjustment calculation on PAIR that have already been the subject of an earlier request for recalculation under 37 CFR § 1.705(b).

This application for reconsideration of the patent PTA decision is being filed within two months after the patent issue date.

This application for reconsideration of the patent PTA decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the patent PTA decision includes below a statement of the facts involved in sufficient detail to allow the United States Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items that arose after allowance.

The Applicants' calculation shows that the correct patent term adjustment, accounting for previously disputed and presently disputed items, should be 1434 days.

The bases under § 1.702 and 37 CFR § 1.705(d) for the adjustment are as follows.

Positive Patent Term Adjustment

Three Year Guarantee (35 USC § 154(b)(1)(B))

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 866 days. The Applicants disagree with this determination because the patent term adjustment on this ground should instead be 990 days, minus 0 days consumed by an appeal, for a net adjustment of 990 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was March 16, 2004,
- the third anniversary of the actual filing date was March 16, 2007,
- the first request for continued examination of the application (RCE) under 35 USC 132(b) was filed on November 30, 2009,
- the first RCE was filed 990 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment on this ground.

Based on experience with other patent term adjustment calculations, the Applicants understand the USPTO's position on this point to be that the patent term adjustment under the Three Year Guarantee (35 USC § 154(b)(1)(B)) ends on the day before the first RCE is filed. The apparent rationale is that the day the RCE is filed is Day 1 that the patent term adjustment has stopped accumulating.

The Applicants respectfully submit that this position is inconsistent with the statute and other USPTO calculations based on events that interrupt the accumulation of patent term adjustments.

First addressing consistency with the statute, the USPTO has determined that time for purposes of assessing a PTA is calculated in two ways: one way when the statute calls for calculation of a delay or interval between two events, and the other way when the statute calls for calculation of the number of days on which a proceeding is pending. This differentiation between the two calculations is understood to turn on the words of the statute. The only part of the statute that calls for a determination of the number of days on which a proceeding is pending is 35 USC § 154(b)(1)(C), which states:

35 USC § 154(b)(1)(C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS.- Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to-

(i) a proceeding under section 135(a);

(ii) the imposition of an order under section 181; or

(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.

To provide a simple example, if an appeal were filed on Monday and decided on Friday, the appellate review was pending on Monday, Tuesday, Wednesday, Thursday, and Friday, thus on five days.

In contrast, the part of the statute relevant to an RCE capping the accrual of a PTA under the three year guarantee is 35 USC § 154(b)(1)(B), which states:

35 USC § 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY.- Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including-

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C),

the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

Reverting again to the above simple example, if an appeal were filed on Monday and decided on Friday, the “time consumed by appellate review” is calculated by setting Monday equal to Day 0, Tuesday equal to Day 1, Wednesday equal to Day 2, Thursday equal to Day 3, and Friday equal 4, thus an elapsed time of FOUR, days, not FIVE as in the preceding example that called for calculation of the number of days a proceeding was pending. In other words, “time consumed by appellate review” calls for the almost universal system for calculation of deadlines in courts and the USPTO, where the starting event from which the deadline is calculated is Day 0, and the succeeding days are assigned consecutive numbers until the day the deadline is reached.

The “time consumed by continued examination,” like the “time consumed by [an appeal, an interference, or a secrecy order],” all under 35 USC § 154(b)(1)(B), is expressed in different words than “each day of the pendency of

the proceeding order, or review," all under the provisions of 35 USC § 154(b)(1)(C), thus these two expressions in different parts of the same statutory section can be assumed to have different meanings as explained above.

In most situations, this is how the USPTO interprets the statute. For example, again based on USPTO petition practice experienced by the Applicants, when an appeal is prosecuted in an application that was pending more than three years, the USPTO subtracts appeal time from accrual of time under the three year guarantee by treating the date the Notice of Appeal is filed as Day 0, the date n days later when the appeal decision is mailed as Day n, simply determines that the appeal has been pending for n days, and subtracts n from the accrued time under the 3-year rule. To calculate the PTA accrued due to the prosecution of a successful appeal, however, the USPTO treats the starting date as Day 1, the date n days later when the appeal decision is mailed as Day n + 1, and determines that there were n+1 days on which the appeal was pending, and that is the PTA for appeal delay.

Now addressing consistency with other calculations, the subtraction from the three-year guarantee for an RCE is based on 35 USC § 154(b)(1)(B)(i), which calls for a subtraction based on "(i) any time consumed by continued examination of the application requested by the applicant under section 132(b)." The subtraction from the three-year guarantee for an appeal is based on parallel language of 35 USC § 154(b)(1)(B)(ii), which calls for a subtraction based on "(ii) ... any time consumed by appellate review by the Board of Patent Appeals and Interferences." This parallel language calls for RCE subtraction and appeal subtraction to be based on the same method of time computation. But they are not.

As pointed out above, the filing date of an RCE is counted as Day 1 of reduction of PTA, so time stops accruing on the three-year guarantee the day before the RCE is filed. But the filing date of a Notice of Appeal is counted as Day 0 of reduction of PTA, so time stops accruing on the three-year guarantee the day the Notice of Appeal is filed. These positions are inconsistent interpretations of the same statutory language. The RCE computation is in error

because the statute calls for routine computation of time in both situations, with the starting day of a period counted as Day 0, while the USPTO position is that the day the RCE is filed is Day 1.

Another example of an inconsistency resulting from ending the three-year delay the day before the first RCE was filed is the following. The patent term adjustment under the Three Year Guarantee permanently stops accruing or is "capped" in two situations: when the patent issues or when the first RCE is filed. Based on experience with other patent term adjustment calculations, the Applicants understand the USPTO policy respecting issue of the patent is that the issue date of the patent is Day 0 that the patent term adjustment stops accruing. In other words, the PTA on this ground is capped on the day the patent issues, not the day before the patent issues. Exactly analogously to the issue date of the patent, the date an RCE is filed is a triggering event that caps the PTA. No reason is apparent why the issue date of a patent is Day 0 on which the PTA has been capped and the filing date of an RCE is day 1 after the PTA has been capped.

For these reasons, the USPTO policy for calculation of the effect of filing an RCE on accrual of the three-year guarantee is in error, and provides a PTA one day shorter than it should be. Correction is respectfully requested.

Reductions in Patent Term Adjustment

Removing Overlap

- Two or more grounds of delay overlap from March 16, 2007, to March 16, 2010, totaling 48 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

Net Patent Term Adjustment

The changes requested by the Applicants to the USPTO patent term adjustment determination in the patent PTA decision are as follows:

Positive Patent Term Adjustment

- **Three Year Guarantee
(35 USC § 154(b)(1)(B))**

	Patent Term Adjustment (days)
USPTO Calculation	866
Applicant Calculation	990

Reductions in Patent Term Adjustment

- **Removing Overlap**

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	48

Conclusion

The Applicants request modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicants is thus 1434 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: December 22, 2010

By: /Michael T. Cruz/
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10/801,930	MULTI-ANTENNA COMMUNICATION SYSTEMS UTILIZING RF-BASED AND BASEBAND SIGNAL WEIGHTING AND COMBINING	12-13- 2010::11:00:39
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/801,930

Filing or 371(c) Date:	03-16-2004	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	10-26-2010	Non-Overlapping USPTO Delays:	1583
A Delays:	717	PTO Manual Adjustments:	0
B Delays:	866	Applicant Delays:	225
C Delays:	0	Total PTA Adjustments:	1358

Patent Term Adjustment History

Explanation Of Calculations

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
86.5	11-29-2009	PTA 36 Months	866		0
86	10-26-2010	Patent Issue Date Used in PTA Calculation			0
85	10-01-2010	Export to Final Data Capture			0
84	09-30-2010	Dispatch to FDC			0
83	09-24-2010	Mail-Petition Decision - Dismissed			0
82	09-24-2010	Petition Decision - Dismissed			0
81	08-12-2010	Response to Reasons for Allowance			0
80	08-13-2010	Application Is Considered Ready for Issue			0
79	08-12-2010	Issue Fee Payment Verified			0
78	08-12-2010	Petition Entered			0
77	08-12-2010	Issue Fee Payment Received			0
76	07-28-2010	Finished Initial Data Capture			0
75	07-14-2010	TC Return to Pubs			0
74	07-06-2010	Pubs Case Remand to TC			0
73	05-31-2010	Export to Initial Data Capture			0
72	05-27-2010	Mail Notice of Allowance			0
71	05-25-2010	Issue Revision Completed			0
68	05-20-2010	Document Verification			0

67	05-20-2010	Allowed Case Returned to the Examiner for Clerical Processing		0
66	05-20-2010	Notice of Allowance Data Verification Completed		0
65	05-20-2010	Notice of Allowability		0
64	03-16-2010	Date Forwarded to Examiner		0
63	02-23-2010	Response after Non-Final Action		0
62	12-28-2009	Mail Non-Final Rejection		0
61	12-22-2009	Non-Final Rejection		0
60	12-02-2009	Date Forwarded to Examiner		0
59	11-30-2009	Amendment Submitted/Entered with Filing of CPA/RCE		0
58	11-30-2009	Request for Continued Examination (RCE)		54
57	12-02-2009	Disposal for a RCE / CPA / R129		0
56	11-30-2009	Request for Extension of Time - Granted		0
55	11-30-2009	Workflow - Request for RCE - Begin		0
54	07-30-2009	Notice of Appeal Filed	3	49
53	07-21-2009	Mail Advisory Action (PTOL - 303)		0
52	07-20-2009	Advisory Action (PTOL-303)		0
51	07-02-2009	Date Forwarded to Examiner		0
50	06-29-2009	Amendment after Final Rejection		0
49	04-27-2009	Mail Final Rejection (PTOL - 326)		0
48	04-24-2009	Final Rejection		0
47	03-17-2009	Date Forwarded to Examiner		0
46	02-17-2009	Response after Non-Final Action	64	44
45	02-17-2009	Request for Extension of Time - Granted		0
44	09-15-2008	Mail Non-Final Rejection		0
43	09-12-2008	Non-Final Rejection		0

42	06-20-2008	New or Additional Drawing Filed		0
41	07-18-2008	Date Forwarded to Examiner		0
40	06-20-2008	Response after Non-Final Action	31	38
39	06-20-2008	Request for Extension of Time - Granted		0
38	02-20-2008	Mail Non-Final Rejection		0
37	02-19-2008	Non-Final Rejection		0
36	11-28-2007	Date Forwarded to Examiner		0
35	11-14-2007	Response after Non-Final Action	61	31
34	11-14-2007	Request for Extension of Time - Granted		0
32	07-30-2007	Case Docketed to Examiner in GAU		0
31	06-14-2007	Mail Non-Final Rejection		0
30	06-11-2007	Non-Final Rejection		0
29	03-14-2005	Information Disclosure Statement considered		0
28	06-06-2007	Date Forwarded to Examiner		0
27	06-01-2007	Response to Election / Restriction Filed		0
26	05-03-2007	Mail Restriction Requirement	717	-1
25	04-30-2007	Requirement for Restriction / Election		0
24	03-29-2007	Case Docketed to Examiner in GAU		0
23	03-23-2006	Case Docketed to Examiner in GAU		0
22	03-21-2006	Case Docketed to Examiner in GAU		0
21	01-25-2006	Case Docketed to Examiner in GAU		0
20	01-18-2006	IFW TSS Processing by Tech Center Complete		0
19	01-18-2006	Case Docketed to Examiner in GAU		0
18	10-21-2005	Miscellaneous Incoming Letter		0
17	03-14-	Reference capture on IDS		0

	2005			
16.7	03-14-2005	Information Disclosure Statement (IDS) Filed		0
16	03-14-2005	Information Disclosure Statement (IDS) Filed		0
15	11-01-2005	Application Return from OIPE		0
14	11-01-2005	Application Is Now Complete		0
13	10-26-2005	Correspondence Address Change		0
12	10-26-2005	Change in Power of Attorney (May Include Associate POA)		0
11	10-26-2005	Correspondence Address Change		0
9	10-26-2005	Application Return TO OIPE		0
8	10-26-2005	Application Dispatched from OIPE		0
7	10-26-2005	Application Is Now Complete		0
6	11-08-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	66	5
5	06-03-2004	Notice Mailed--Application Incomplete--Filing Date Assigned		0
4	04-13-2004	Cleared by OIPE CSR		0
3	04-13-2004	CASE CLASSIFIED BY OIPE		0
2	03-25-2004	IFW Scan & PACR Auto Security Review		0
1	03-16-2004	Initial Exam Team nn		0

[Close Window](#)

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/801930

Docket No. 16136US02
USPTO

APPLICANT'S

DATE	EVENT	CALCULATION		APPLICANT'S	
		PTO Delay	Appl. Delay	PTO Delay	Appl. Delay
Tuesday, October 26, 2010	Patent Grant date				
Friday, October 01, 2010	Export to Final Data Capture				
Thursday, September 30, 2010	Dispatch to FDC				
Friday, September 24, 2010	Mail-Petition Decision - Dismissed				
Friday, September 24, 2010	Petition Decision - Dismissed				
Friday, August 13, 2010	Application Is Considered Ready for Issue				
Thursday, August 12, 2010	Response to Reasons for Allowance				
Thursday, August 12, 2010	Issue Fee Payment Verified				
Thursday, August 12, 2010	Petition Entered				
Thursday, August 12, 2010	Issue Fee Payment Received				
Wednesday, July 28, 2010	Finished Initial Data Capture				
Wednesday, July 14, 2010	TC Return to Pubs				
Tuesday, July 06, 2010	Pubs Case Remand to TC				
Monday, May 31, 2010	Export to Initial Data Capture				
Thursday, May 27, 2010	Mail Notice of Allowance				
Tuesday, May 25, 2010	Issue Revision Completed				
Thursday, May 20, 2010	Document Verification				

Thursday, May 20, 2010	Allowed Case Returned to the Examiner for Clerical Processing			
Thursday, May 20, 2010	Notice of Allowance Data Verification Completed			
Thursday, May 20, 2010	Notice of Allowability			
Tuesday, March 16, 2010	Date Forwarded to Examiner			
Tuesday, February 23, 2010	Response after Non-Final Action			
Monday, December 28, 2009	Mail Non-Final Rejection			
Tuesday, December 22, 2009	Non-Final Rejection			
Wednesday, December 02, 2009	Date Forwarded to Examiner			
Wednesday, December 02, 2009	Disposal for a RCE / CPA / R129 Amendment			
Monday, November 30, 2009	Submitted/Entered with Filing of CPA/RCE			
Monday, November 30, 2009	Request for Continued Examination (RCE)			990.00
Monday, November 30, 2009	Request for Extension of Time - Granted			
Monday, November 30, 2009	Workflow - Request for RCE - Begin			
Sunday, November 29, 2009	PTA 36 Months	866		
Thursday, July 30, 2009	Notice of Appeal Filed			3
Monday, July 27, 2009	Three months after Office action			3.00
Tuesday, July 21, 2009	Mail Advisory Action (PTOL - 303)			
Monday, July 20, 2009	Advisory Action (PTOL-303)			

Thursday, July 02, 2009	Date Forwarded to Examiner			
Monday, June 29, 2009	Amendment after Final Rejection			
Monday, April 27, 2009	Mail Final Rejection (PTOL - 326)			
Friday, April 24, 2009	Final Rejection			
Tuesday, March 17, 2009	Date Forwarded to Examiner			
Tuesday, February 17, 2009	Response after Non-Final Action			64.00
Tuesday, February 17, 2009	Request for Extension of Time - Granted			
Monday, December 15, 2008	Three months after Office action			
Monday, September 15, 2008	Mail Non-Final Rejection			
Friday, September 12, 2008	Non-Final Rejection			
Friday, July 18, 2008	Date Forwarded to Examiner			
Friday, June 20, 2008	New or Additional Drawing Filed			
Friday, June 20, 2008	Response after Non-Final Action			31.00
Friday, June 20, 2008	Request for Extension of Time - Granted			
Tuesday, May 20, 2008	Three months after Office action			
Wednesday, February 20, 2008	Mail Non-Final Rejection			
Tuesday, February 19, 2008	Non-Final Rejection			
Wednesday, November 28, 2007	Date Forwarded to Examiner			
Wednesday, November 14, 2007	Response after Non-Final Action			61.00

Wednesday, November 14, 2007	Request for Extension of Time - Granted			
Monday, July 30, 2007	Case Docketed to Examiner in GAU			
Friday, September 14, 2007	Three months after Office action			
Thursday, June 14, 2007	Mail Non-Final Rejection			
Monday, June 11, 2007	Non-Final Rejection			
Wednesday, June 06, 2007	Date Forwarded to Examiner			
Friday, June 01, 2007	Response to Election / Restriction Filed			
Thursday, May 03, 2007	Mail Restriction Requirement	717		717.00
Monday, April 30, 2007	Requirement for Restriction / Election			-48.00
Thursday, March 29, 2007	Case Docketed to Examiner in GAU			
Friday, March 16, 2007	Three year date			
Thursday, March 23, 2006	Case Docketed to Examiner in GAU			
Tuesday, March 21, 2006	Case Docketed to Examiner in GAU			
Wednesday, January 25, 2006	Case Docketed to Examiner in GAU			
Wednesday, January 18, 2006	IFW TSS Processing by Tech Center Complete			
Wednesday, January 18, 2006	Case Docketed to Examiner in GAU			
Tuesday, November 01, 2005	Application Return from OIPE			
Tuesday, November 01, 2005	Application Is Now Complete			

Wednesday, October 26, 2005	Correspondence Address Change			
Wednesday, October 26, 2005	Change in Power of Attorney (May Include Associate POA)			
Wednesday, October 26, 2005	Correspondence Address Change			
Wednesday, October 26, 2005	Application Return TO OIPE			
Wednesday, October 26, 2005	Application Dispatched from OIPE			
Wednesday, October 26, 2005	Application Is Now Complete			
Friday, October 21, 2005	Miscellaneous Incoming Letter			
Monday, May 16, 2005	14 month date			
Monday, March 14, 2005	Information Disclosure Statement considered			
Monday, March 14, 2005	Reference capture on IDS			
Monday, March 14, 2005	Information Disclosure Statement (IDS) Filed			
Monday, March 14, 2005	Information Disclosure Statement (IDS) Filed			
Monday, November 08, 2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant			66.00
Friday, September 03, 2004	Three months after Notice of Incomplete application			
Thursday, June 03, 2004	Notice Mailed--Application Incomplete--Filing Date Assigned			

